

**Individuals with Disabilities Education Act (IDEA)**  
**Part C Procedural Safeguard Requirements**  
**(34 CFR §§303.400–303.460)**

**General**

**Sec. 303.400 General responsibility of lead agency for procedural safeguards.**

Each lead agency shall be responsible for--

- (a) Establishing or adopting procedural safeguards that meet the requirements of this subpart; and
- (b) Ensuring effective implementation of the safeguards by each public agency in the State that is involved in the provision of early intervention services under this part.

**Sec. 303.401 Definitions of consent, native language, and personally identifiable information.**

As used in this subpart--

- (a) Consent means that--
  - (1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;
  - (2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
  - (3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time;
- (b) Native language, where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part;
- (c) Personally identifiable means that information includes--
  - (1) The name of the child, the child's parent, or other family member;
  - (2) The address of the child;
  - (3) A personal identifier, such as the child's or parent's social security number; or
  - (4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

**Sec. 303.402 Opportunity to examine records.**

In accordance with the confidentiality procedures in the regulations under part B of the Act (34 CFR 300.560

through 300.576), the parents of a child eligible under this part must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with the child, and any other area under this part involving records about the child and the child's family.

**Sec. 303.403 Prior notice; native language.**

- (a) **General.** Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.
- (b) Content of notice. The notice must be in sufficient detail to inform the parents about--
  - (1) The action that is being proposed or refused;
  - (2) The reasons for taking the action;
  - (3) All procedural safeguards that are available under Secs. 303.401-303.460 of this part; and
  - (4) The State complaint procedures under Secs. 303.510-303.512, including a description of how to file a complaint and the timelines under those procedures.
- (c) Native language.
  - (1) The notice must be--(i) Written in language understandable to the general public; and (ii) Provided in the native language of the parents, unless it is clearly not feasible to do so.
  - (2) If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that--(i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication; (ii) The parent understands the notice; and (iii) There is written evidence that the requirements of this paragraph have been met.
  - (3) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, braille, or oral communication).

**Sec. 303.404 Parent consent.**

- (a) Written parental consent must be obtained before--

- (1) Conducting the initial evaluation and assessment of a child under Sec. 303.322; and
- (2) Initiating the provision of early intervention services (see Sec. 303.342(e)).
- (b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent--
  - (1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and
  - (2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

**Note 1:** In addition to the consent requirements in this section, other consent requirements are included in (1) Sec. 303.460(a), regarding the exchange of personally identifiable information among agencies, and (2) the confidentiality provisions in the regulations under part B of the Act (34 CFR 300.571) and 34 CFR part 99 (Family Educational Rights and Privacy), both of which apply to this part.

**Note 2:** Under Sec. 300.504(b) of the part B regulations, a public agency may initiate procedures to challenge a parent's refusal to consent to the initial evaluation of the parent's child and, if successful, obtain the evaluation. This provision applies to eligible children under this part, since the part B evaluation requirement applies to all children with disabilities in a State, including infants and toddlers.

**Sec. 303.405 Parent right to decline service.**

The parents of a child eligible under this part may determine whether they, their child, or other family members will accept or decline any early intervention service under this part in accordance with State law, and may decline such a service after first accepting it, without jeopardizing other early intervention services under this part.

**Sec. 303.406 Surrogate parents.**

- (a) **General.** Each lead agency shall ensure that the rights of children eligible under this part are protected if--
  - (1) No parent (as defined in Sec. 303.18) can be identified;
  - (2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or
  - (3) The child is a ward of the State under the laws of that State.
- (b) **Duty of lead agency and other public agencies.** The duty of the lead agency, or other public agency under

paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This must include a method for--

- (1) Determining whether a child needs a surrogate parent; and
- (2) Assigning a surrogate parent to the child.
- (c) **Criteria for selecting surrogates.**
  - (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.
  - (2) Public agencies shall ensure that a person selected as a surrogate parent--(i) Has no interest that conflicts with the interests of the child he or she represents; and (ii) Has knowledge and skills that ensure adequate representation of the child.
- (d) **Non-employee requirement; compensation.**
  - (1) A person assigned as a surrogate parent may not be--(i) An employee of any State agency; or (ii) A person or an employee of a person providing early intervention services to the child or to any family member of the child.
  - (2) A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.
- (e) **Responsibilities.** A surrogate parent may represent a child in all matters related to--
  - (1) The evaluation and assessment of the child;
  - (2) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;
  - (3) The ongoing provision of early intervention services to the child; and
  - (4) Any other rights established under this part.

**Mediation and Due Process Procedures for Parents and Children**

**Sec. 303.419 Mediation.**

- (a) **General.** Each State shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in Sec. 303.403(a) to resolve the disputes through a mediation process which, at a minimum, must be available whenever a hearing is requested under Sec. 303.420. The lead agency may either use the mediation system established under Part B of the Act or establish its own system.
- (b) **Requirements.** The procedures must meet the following requirements:

- (1) The procedures must ensure that the mediation process--(i) Is voluntary on the part of the parties; (ii) Is not used to deny or delay a parent's right to a due process hearing under Sec. 303.420, or to deny any other rights afforded under Part C of the Act; and (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
  - (2) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
  - (3) The State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (c) of this section.
  - (4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
  - (5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.
  - (6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.
- (c) **Meeting to encourage mediation.** A State may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party--
- (1) Who is under contract with a parent training and information center or community parent resource center in the State established under sections 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and
  - (2) Who would explain the benefits of the mediation process and encourage the parents to use the process.

**Sec. 303.420 Due process procedures.**

Each system must include written procedures including procedures for mediation as described in Sec. 303.419, for the timely administrative resolution of individual child complaints by parents concerning any of the matters in Sec. 303.403(a). A State may meet this requirement by--

- (a) Adopting the mediation and due process procedures in 34 CFR 300.506 through 300.512 and developing procedures that meet the requirements of Sec. 303.425; or
- (b) Developing procedures that--
  - (1) Meet the requirements in Sec. 303.419 and Secs. 303.421 through 303.425; and
  - (2) Provide parents a means of filing a complaint.

**Note 1:** Sections 303.420 through 303.425 are concerned with the adoption of impartial procedures for resolving individual child complaints (i.e., complaints that generally affect only a single child or the child's family). These procedures require the appointment of a decision-maker who is impartial, as defined in Sec. 303.421(b), to resolve a dispute concerning any of the matters in Sec. 303.403(a). The decision of the impartial decision-maker is binding unless it is reversed on appeal.

A different type of administrative procedure is included in Secs. 303.510 through 303.512 of subpart F of this part. Under those procedures, the lead agency is responsible for (1) investigating any complaint that it receives (including individual child complaints and those that are systemic in nature), and (2) resolving the complaint if the agency determines that a violation has occurred.

**Note 2:** It is important that the administrative procedures developed by a State be designed to result in speedy resolution of complaints. An infant's or toddler's development is so rapid that undue delay could be potentially harmful.

**Sec. 303.421 Appointment of an impartial person.**

- (a) **Qualifications and duties.** An impartial person must be appointed to implement the complaint resolution process in this subpart. The person must--
  - (1) Have knowledge about the provisions of this part and the needs of, and services available for, eligible children and their families; and
  - (2) Perform the following duties: (i) Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint. (ii) Provide a record of the proceedings, including a written decision.
- (b) **Definition of impartial.**
  - (1) As used in this section, impartial means that the person appointed to implement the complaint resolution process--(i) Is not an employee of any agency or other entity involved in the provision of

early intervention services or care of the child; and (ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

- (2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

**Sec. 303.422 Parent rights in administrative proceedings.**

- (a) **General.** Each lead agency shall ensure that the parents of children eligible under this part are afforded the rights in paragraph (b) of this section in any administrative proceedings carried out under Sec. 303.420.
- (b) **Rights.** Any parent involved in an administrative proceeding has the right to--
  - (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part;
  - (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
  - (3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;
  - (4) Obtain a written or electronic verbatim transcription of the proceeding; and
  - (5) Obtain written findings of fact and decisions.

**Sec. 303.423 Convenience of proceedings; timelines.**

- (a) Any proceeding for implementing the complaint resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents.
- (b) Each lead agency shall ensure that, not later than 30 days after the receipt of a parent's complaint, the impartial proceeding required under this subpart is completed and a written decision mailed to each of the parties.

**Note:** Under part B of the Act, States are allowed 45 days to conduct an impartial due process hearing (i.e., within 45 days after the receipt of a request for a hearing, a decision is reached and a copy of the decision is mailed to each of the parties). (See 34 CFR 300.512.) Thus, if a State, in meeting the requirements of Sec. 303.420, elects to adopt the due process procedures under part B, that State would

also have 45 days for hearings. However, any State in that situation is encouraged (but not required) to accelerate the timeline for the due process hearing for children who are eligible under this part--from 45 days to the 30-day timeline in this section. Because the needs of children in the birth-through-two-age range change so rapidly, quick resolution of complaints is important.

**Sec. 303.424 Civil action.**

Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act.

**Sec. 303.425 Status of a child during proceedings.**

- (a) During the pendency of any proceeding involving a complaint under this subpart, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.
- (b) If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.

**Confidentiality**

**Sec. 303.460 Confidentiality of information.**

- (a) Each State shall adopt or develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part, including the right of parents to written notice of and written consent to the exchange of this information among agencies consistent with Federal and State law.
- (b) These policies and procedures must meet the requirements in 34 CFR 300.560 through 300.576, with the modifications specified in Sec. 303.5(b).

**Note:** With the modifications referred to in paragraph (b) of this section, the confidentiality requirements in the regulations implementing part B of the Act (34 CFR 300.560 through 300.576) are to be used by public agencies to meet the confidentiality requirements under part C of the Act and this section (Sec. 303.460). The part B provisions incorporate by reference the regulations in 34 CFR part 99 (Family Educational Rights and Privacy); therefore, those regulations also apply to this part.